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6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2011-773

11 **LINDSAY MARIE HERNANDEZ**
12 **2721 Bernard St., Apt. 39**
13 **Bakersfield, CA 93306**

DEFAULT DECISION AND ORDER

14 **9923 River View Circle**
15 **Stockton, CA 95209-4170**

[Gov. Code, §11520]

16 **Registered Nurse License No. 723421**

17 Respondent.

18
19 **FINDINGS OF FACT**

20 1. On or about March 15, 2011, Complainant Louise R. Bailey, M.ED., RN, in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs, filed Accusation Case No. 2011-773 against Lindsay Marie Hernandez
23 (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit 1.)

24 2. On or about March 24, 2008, the Board of Registered Nursing (Board) issued
25 Registered Nurse License No. 723421 to Respondent. The Registered Nurse License was in full
26 force and effect at all times relevant to the charges brought herein and will expire on December
27 31, 2011, unless renewed.
28

1 3. On or about March 15, 2011, Respondent was served by Certified Mail copies of the
2 Accusation Case No. 2011-773, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board, which was and is:

6 2721 Bernard St., Apt. 39
7 Bakersfield, CA 93306.

8 4. On or about April 13, 2011, Respondent was served by Certified Mail copies of the
9 Accusation Case No. 2011-773, Statement to Respondent, Notice of Defense, Request for
10 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
11 Respondent's address provided on the returned mail which was and is:

12 9923 River View Circle
13 Stockton, CA 95209-4170. (Copy of the Accusation attached as Exhibit 1. Copy of the returned
14 mail envelope attached as Exhibit 2.)

15 5. Service of the Accusation was effective as a matter of law under the provisions of
16 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
17 124.

18 6. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent
20 files a notice of defense, and the notice shall be deemed a specific denial of all parts
21 of the accusation not expressly admitted. Failure to file a notice of defense shall
22 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
23 may nevertheless grant a hearing.

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
25 the Accusation, and therefore waived her right to a hearing on the merits of Accusation Case No.
26 2011-773.

27 8. California Government Code section 11520 states, in pertinent part:

28 (a) If the respondent either fails to file a notice of defense or to appear at the
 hearing, the agency may take action based upon the respondent's express admissions
 or upon other evidence and affidavits may be used as evidence without any notice to
 respondent.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation Case No. 2011-773, finds that the charges and allegations in Accusation Case No. 2011-773, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$1,322.50 as of May 16, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Lindsay Marie Hernandez has subjected her Registered Nurse License No. 723421 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. On or about May 5, 2010, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152 (a) [driving under the influence], in the criminal proceeding entitled *The People of the State of California v. Lindsay Marie Hernandez* (Super. Ct. Joaquin County, 2010, Case No. SM274128A). Such conduct violates Business and Professions Code sections 2761, subdivisions (a) and (f), and 490 [conviction of substantially related crime]; 2762, subdivisions (b) and (c) [dangerous use of alcohol; conviction involving the use of alcohol];

b. Other matter to be considered; On or about September 22, 2010, Respondent was arrested for drunk driving by the California Highway Patrol.

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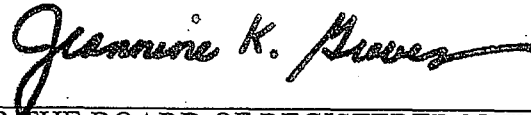
ORDER

IT IS SO ORDERED that Registered Nurse License 723421, heretofore issued to Respondent Lindsay Marie Hernandez, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 12, 2011.

It is so ORDERED July 13, 2011.



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

default decision_LIC.rtf
DOJ Matter ID:LA2011501306

Attachment:
Exhibit A: Accusations

Exhibit A

Accusations

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
SUPERVISING DEPUTY ATTORNEY GENERAL
3 GLORIA A. BARRIOS
Supervising Deputy Attorney General
4 State Bar No. 94811
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2540
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2011-773

13 **LINDSAY MARIE HERNANDEZ**
14 **2721 Bernard St., Apt. 39**

15 **Bakersfield, CA 93306**

ACCUSATION

16 **Registered Nurse License No. RN 723421**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about March 24, 2008, the Board of Registered Nursing (Board) issued
24 Registered Nurse License No. 723421 to Lindsay Marie Hernandez (Respondent). The
25 Registered Nurse License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on December 31, 2011, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Board, under the authority of the following

1 laws. All section references are to the Business and Professions Code unless otherwise indicated.

2 STATUTORY PROVISIONS

3 4. Section 490 states:

4 “(a) In addition to any other action that a board is permitted to take against a licensee, a
5 board may suspend or revoke a license on the ground that the licensee has been convicted of a
6 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
7 or profession for which the license was issued.

8 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
9 discipline a licensee for conviction of a crime that is independent of the authority granted under
10 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
11 of the business or profession for which the licensee's license was issued.

12 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
13 conviction following a plea of nolo contendere. Any action that a board is permitted to take
14 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
15 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
16 made suspending the imposition of sentence, irrespective of a subsequent order under the
17 provisions of Section 1203.4 of the Penal Code.”

18 5. Section 2750 provides, in pertinent part, that the Board may discipline any licensee,
19 including a licensee holding a temporary or an inactive license, for any reason provided in Article
20 3 (commencing with section 2750) of the Nursing Practice Act.

21 6. Section 2761 states:

22 “The board may take disciplinary action against a certified or licensed nurse or deny an
23 application for a certificate or license for any of the following:

24 “(a) Unprofessional conduct, which includes, but is not limited to, the following:

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26 “(f) Conviction of a felony or of any offense substantially related to the qualifications,
27 functions, and duties of a registered nurse, in which event the record of the conviction shall be
28 conclusive evidence thereof.”

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1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of Substantially-Related Crimes)**

5 11. Respondent is subject to disciplinary action under sections 2761, subdivisions (a) and
6 (f) and 490, as defined in California Code of Regulations, title 16, section 1444, in that
7 Respondent has been convicted of crimes substantially related to the qualifications, functions or
8 duties of a registered nurse, as follows:

9 a. On or about May 5, 2010, after pleading *nolo contendere*, Respondent was convicted
10 of one misdemeanor count of violating Vehicle Code section 23152 (a) [driving under the
11 influence], in the criminal proceeding entitled *The People of the State of California v. Lindsay*
12 *Marie Hernandez* (Super. Ct. San Joaquin County, 2010, Case No. SM274128A). Respondent
13 was sentenced to 3 years probation, 10 days in jail, and fine of \$110.00 suspended if Respondent
14 successfully completes probation. The circumstances surrounding the conviction are that on or
15 about April 15, 2010, three Stockton Police Officers were dispatched to investigate a vehicle
16 accident in Stockton, California. Respondent, while under the influence, hit a tree, damaging her
17 vehicle and harming herself. While in custody of the police, Respondent attempted to kick out
18 the back windows of the police car. While being transported to jail, she repeatedly banged her
19 head against the cage. She also pushed herself into the arresting officer.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Dangerous Use of Alcohol)**

22 12. Respondent is subject to disciplinary action under sections 2762, subdivisions (b),
23 and (c), in that Respondent used alcoholic beverages and/or drugs to an extent or in a manner
24 dangerous or injurious to herself, and the public. Respondent was under the influence of alcohol
25 and/or drugs, while posing danger to herself and the general public. Respondent also drove a
26 vehicle, while under the influence of alcohol and/or drugs. Complainant refers to, and by this
27 reference incorporates, the allegations set forth above in paragraph 11, subparagraph (a),
28 inclusive, as though set forth fully.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Convictions Involving the Consumption of Alcohol and/or Drugs)**

3 13. Respondent is subject to disciplinary action under section 2761, subdivisions (a) and
4 (f), as defined in section 2762, subdivisions (b) and (c), in that Respondent was convicted of
5 crimes involving the consumption of alcohol and/or drugs. Complainant refers to, and by this
6 reference incorporates, the allegations set forth above in paragraph 11, subparagraph (a),
7 inclusive, as though set forth fully.

8 **OTHER MATTERS**

9 14. On or about September 22, 2010, at approximately 5:00 am, Respondent was arrested
10 by California Highway Patrol for drunk driving. The circumstances surrounding the arrest are
11 that Respondent was stopped parked on the right hand side of the road. She told officers, she had
12 pulled over to vomit and lost her keys. The officers detected alcohol on her breath, her eyes were
13 red and watery, and her speech slow. She admitted to having consumed three shots of alcohol.
14 During field sobriety tests, Respondent showed signs of impairment. Upon being arrested by
15 officers, Respondent broke free and ran into the freeway without looking for oncoming traffic.
16 Her blood alcohol concentration (BAC) was 21%.

17
18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Board issue a decision:

21 1. Revoking or suspending Registered Nurse License No. 723421, issued to Lindsay
22 Marie Hernandez;

23 2. Ordering Lindsay Marie Hernandez to pay the Board the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3; and

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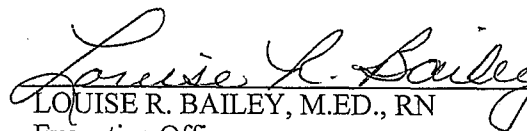
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3. Taking such other and further action as deemed necessary and proper.

DATED: _____

3/15/11



LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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